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Attorneys for: Defendant ARMANDO VARGAS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

JOSE FELIPE RUIZ; CARLOS AGUILAR
RIVAS; MARCELINO HERNANDEZ;
ALEJANDRO AGUILAR; RAMIRO
HERNANDEZ PARRA

Plaintiffs,

vs.

ARMANDO VARGAS,

Defendant.

Case No.: 08-CV-01804-PVT

ANSWER OF DEFENDANT ARMANDO
VARGAS

Demand for Jury Trial

Defendant ARMANDO VARGAS ("Defendant") hereby answers the Complaint of JOSE FELIPE RUIZ; CARLOS AGUILAR RIVAS; MARCELINO HERNANDEZ; ALEJANDRO AGUILAR; and RAMIRO HERNANDEZ PARRA ("Plaintiffs") and allege as follows:

1. Answering the allegations of paragraph one, Defendant admits that the named Plaintiffs were construction workers who performed labor for Defendant as Plumbers.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore deny them.

2. Defendant answers Plaintiffs' allegations as follows:

(a) Answering the allegations of paragraph two(a), Defendant denies the allegations contained therein.

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1 (b) Answering the allegations of paragraph two(b), Defendant denies the
2 allegations contained therein.

3 (c) Answering the allegations of paragraph two(c), Defendant denies the
4 allegations contained therein.

5 (d) Answering the allegations of paragraph two(d), Defendant denies the
6 allegations contained therein.

7 3. Answering the allegations of paragraph three, Defendant does not contest the
8 propriety of this Court as the venue for this action.

9 4. Answering the allegations of paragraph four, Defendant does not contest this
10 Court's subject matter jurisdiction over the claims set forth in Plaintiffs' Complaint.

11 5. Answering the allegations of paragraph five, Defendant admits that the named
12 Plaintiffs are over the age of eighteen. Defendant is without knowledge or information
13 sufficient to form a belief as to the truth of the remaining allegations, and therefore denies them.

14 6. Answering the allegations of paragraph six, Defendant is without knowledge or
15 information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

16 7. Answering the allegations of paragraph seven, Defendant admits the allegations
17 contained therein.

18 8. Answering the allegations of paragraph eight, Defendant admits the allegations
19 contained therein.

20 9. Answering the allegations of paragraph nine, Defendant admits that DALRADA
21 FINANCIAL issued payroll checks for Defendant at various times for labor performed for
22 Defendant. Defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the remaining allegations, and therefore denies them.

24 10. Answering the allegations of paragraph ten, Defendant admits that the named
25 Plaintiffs were employed by Defendant on various projects. Defendant is without knowledge or
26 information sufficient to form a belief as to the truth of the remaining allegations, and therefore
27 denies them.
28

1 11. Answering the allegations of paragraph eleven, Defendant denies the allegations
2 contained therein.

3 12. Answering the allegations of paragraph twelve, Defendant denies the allegations
4 contained therein.

5 13. Answering the allegations of paragraph thirteen, Defendant denies the allegations
6 contained therein.

7 14. Answering the allegations of paragraph fourteen, Defendant denies the
8 allegations contained therein.

9 15. Answering the allegations of paragraph fifteen, Defendant denies the allegations
10 contained therein.

11 16. Answering the allegations of paragraph sixteen, Defendant admits that Plaintiffs
12 were paid with checks issued by DALRADA FINANACIAL. Defendant denies the remaining
13 allegations contained therein.

14 17. Answering the allegations of paragraph seventeen, Defendant repeats and
15 incorporates by reference all of the foregoing responses set forth in paragraphs 1-19 of this
16 Answer as if set forth fully herein.

17 18. Answering the allegations of paragraph eighteen, Defendant admits that
18 Plaintiffs' employment was subject to the provisions of the Fair Labor Standards Act of 1983,
19 as amended.

20 19. Answering the allegations of paragraph nineteen, Defendant is without
21 knowledge or information sufficient to form a belief as to the truth of the allegations, and
22 therefore denies them.

23 20. Answering the allegations of paragraph twenty, Defendant denies the allegations
24 contained therein.

25 21. Answering the allegations of paragraph twenty-one, Defendant denies the
26 allegations contained therein.

27 22. Answering the allegations of paragraph twenty-two, Defendant denies the
28 allegations contained therein.

1 23. Answering the allegations of paragraph twenty-three, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations, and
3 therefore denies them.

4 24. Answering the allegations of paragraph twenty-four, Defendant denies the
5 allegations contained therein.

6 25. Answering the allegations of paragraph twenty-five, Defendant denies the
7 allegations contained therein.

8 26. Answering the allegations of paragraph twenty-six, Defendant repeats and
9 incorporates by reference all of the foregoing responses set forth in paragraphs 1-29 of this
10 Answer as if set forth fully herein.

11 27. Answering the allegations of paragraph twenty-seven, Defendant admits that the
12 named Plaintiffs were employed in execution of projects which could have been subject to the
13 prevailing wage laws of the State of California. Defendant is without knowledge or information
14 sufficient to form a belief as to the truth of the remaining allegations, and therefore denies them.

15 28. Answering the allegations of paragraph twenty-eight, Defendant admits that
16 Defendant was subject to the prevailing wage laws of the State of California regarding work
17 undertaken on public works construction projects. Defendant is without knowledge or
18 information sufficient to form a belief as to the truth of the remaining allegations, and therefore
19 denies them.

20 29. Answering the allegations of paragraph twenty-nine, Defendant admits that
21 Defendant was subject to the overtime wage laws of the State of California regarding work
22 undertaken on private construction projects. Defendant is without knowledge or information
23 sufficient to form a belief as to the truth of the remaining allegations, and therefore denies them.

24 30. Answering the allegations of paragraph thirty, Defendant denies the allegations
25 contained therein.

26 31. Answering the allegations of paragraph thirty-one, Defendant denies the
27 allegations contained therein.
28

1 32. Answering the allegations of paragraph thirty-two, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations, and
3 therefore denies them.

4 33. Answering the allegations of paragraph thirty-three, Defendant is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations, and
6 therefore denies them.

7 34. Answering the allegations of paragraph thirty-four, Defendant repeats and
8 incorporates by reference all of the foregoing responses set forth in paragraphs 1-36 of this
9 Answer as if set forth fully herein.

10 35. Answering the allegations of paragraph thirty-five, Defendant is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations, and
12 therefore denies them.

13 36. Answering the allegations of paragraph thirty-six, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations, and
15 therefore denies them.

16 37. Answering the allegations of paragraph thirty-seven, Defendant is without
17 knowledge or information sufficient to form a belief as to the truth of the allegations, and
18 therefore denies them.

19 38. Answering the allegations of paragraph thirty-eight, Defendant is without
20 knowledge or information sufficient to form a belief as to the truth of the allegations, and
21 therefore denies them.

22 39. Answering the allegations of paragraph thirty-nine, Defendant is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations, and
24 therefore denies them.

25 40. Answering the allegations of paragraph forty, Defendant is without knowledge or
26 information sufficient to form a belief as to the truth of the allegations, and therefore denies
27 them.
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1 41. Answering the allegations of paragraph forty-one, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations, and
3 therefore denies them.

4 42. Answering the allegations of paragraph forty-two, Defendant is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations, and
6 therefore denies them.

7 43. Answering the allegations of paragraph forty-three, Defendant denies the
8 allegations contained therein.

9 44. Answering the allegations of paragraph forty-four, Defendant denies the
10 allegations contained therein.

11 45. Answering the allegations of paragraph forty-five, Defendant repeats and
12 incorporates by reference all of the foregoing responses set forth in paragraphs 1-47 of this
13 Answer as if set forth fully herein.

14 46. Answering the allegations of paragraph forty-six, Defendant is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations, and
16 therefore denies them.

17 47. Answering the allegations of paragraph forty-seven, Defendant denies the
18 allegations contained therein.

19 48. Answering the allegations of paragraph forty-eight, Defendant denies the
20 allegations contained therein.

21 49. Answering the allegations of paragraph forty-nine, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations, and
23 therefore denies them.

24 50. Answering the allegations of paragraph fifty, Defendant repeats and incorporates
25 by reference all of the foregoing responses set forth in paragraphs 1-52 of this Answer as if set
26 forth fully herein.

27 51. Answering the allegations of paragraph fifty-one, Defendant denies the
28 allegations contained therein.

1 52. Answering the allegations of paragraph fifty-two, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations, and
3 therefore denies them.

4 53. Answering the allegations of paragraph fifty-three, Defendant denies the
5 allegations contained therein.

6 54. Answering the allegations of paragraph fifty-four, Defendant repeats and
7 incorporates by reference all of the foregoing responses set forth in paragraphs 1-56 of this
8 Answer as if set forth fully herein.

9 55. Answering the allegations of paragraph fifty-five, Defendant is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations, and
11 therefore denies them.

12 56. Answering the allegations of paragraph fifty-six, Defendant is without
13 knowledge or information sufficient to form a belief as to the truth of the allegations, and
14 therefore denies them.

15 57. Answering the allegations of paragraph fifty-seven, Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations, and
17 therefore denies them.

18 58. Answering the allegations of paragraph fifty-eight, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations, and
20 therefore denies them.

21 59. Answering the allegations of paragraph fifty-nine, Defendant denies the
22 allegations contained therein.

23 60. Answering the allegations of paragraph sixty, Defendant is without knowledge or
24 information sufficient to form a belief as to the truth of the allegations, and therefore denies
25 them.

26 61. Answering the allegations of paragraph sixty-one, Defendant is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations, and
28 therefore denies them.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

62. As a first and separate affirmative defense, this answering Defendant alleges that each and every purported cause of action alleged fails to state facts sufficient to constitute a cause of action against this Defendant, or at all.

SECOND AFFIRMATIVE DEFENSE

63. As a second and separate affirmative defense, this answering Defendant alleges that each and every purported cause of action is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

64. As a third and separate affirmative defense, this answering Defendant alleges that Plaintiffs knew, or should have known, of the purported facts supporting each alleged cause of action for an unreasonably long period of time prior to the commencement of this action, and did not give notice of the same to Defendant, all to the prejudice of Defendant, and as a result this action is barred by laches and other similar provisions of statutory and common law.

FOURTH AFFIRMATIVE DEFENSE

65. As a fourth and separate affirmative defense, this answering Defendant alleges that with respect to any contracts, obligations or agreements as alleged in the complaint, any duty or performance of Defendant is excused by reason of frustration of purpose.

FIFTH AFFIRMATIVE DEFENSE

66. As a fifth and separate affirmative defense, this answering Defendant alleges that with respect to any contracts, obligations or agreements as alleged in the Complaint, any duty or performance of Defendant is excused by reason of breach of condition precedent.

SIXTH AFFIRMATIVE DEFENSE

67. As a sixth and separate affirmative defense, this answering Defendant alleges that with respect to any contracts, obligations or agreements as alleged in the Complaint, any duty or performance of Defendant is excused by reason of breach of obligations by Plaintiffs.

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SEVENTH AFFIRMATIVE DEFENSE

68. As a seventh and separate affirmative defense, this answering Defendant alleges that with respect to any contracts, obligations or agreements as alleged in the Complaint, any duty or performance of Defendant is excused by reason of impossibility of performance.

EIGHTH AFFIRMATIVE DEFENSE

69. As an eighth and separate affirmative defense, this answering Defendant alleges that as to each and every cause of action contained in the Complaint, Plaintiffs, and each of them, lack standing to bring and maintain this action.

NINTH AFFIRMATIVE DEFENSE

70. As a ninth and separate affirmative defense, this answering Defendant alleges that if he is subject to any liability, it will result in unjust enrichment of the Plaintiffs, and each of them, allowing Plaintiffs to recover more than they, and each of them, are entitled to.

TENTH AFFIRMATIVE DEFENSE

71. As a tenth and separate affirmative defense, this answering Defendant alleges that Plaintiffs, and each of them, owes Defendant money and, if Plaintiffs prevail in this lawsuit, such monies owed by Plaintiffs Defendant should be offset.

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ELEVENTH AFFIRMATIVE DEFENSE

72. As an eleventh and separate affirmative defense, this answering Defendant alleges that Defendant has insufficient knowledge or information on which to form a belief as to whether he may have additional, as yet unstated, affirmative and/or other defenses in the event discovery indicates such would be appropriate.

WHEREFORE, Defendant prays for judgment on the claims alleged in Plaintiffs' Complaint as follows:

1. For Plaintiffs, and each of them, to take nothing by way of the Complaint;
2. For Defendant to be awarded attorneys' fees;
3. For the costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

Dated: May 12, 2008

FISHMAN, LARSEN, GOLDRING & ZEITLER

BY: 

Douglas M. Larsen,
Attorneys for Defendant ARMANDO VARGAS

PROOF OF SERVICE
CCP §§ 1011, 1013, 1013a, 2015.5
FRCP 5(b)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is 7112 N. Fresno Street, Suite 450, Fresno, California 93720.

On May 12, 2008, I served the document described as **ANSWER OF DEFENDANT ARMANDO VARGAS** on the interested parties in this action ☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: ☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

Tomas E. Margain
Law Offices of Tomas E. Margain
1550 Bryant Street, Suite 725
San Francisco, CA 94103

☒ BY MAIL ☐ I deposited such envelope in the mail at Fresno, California. The envelope was mailed with postage thereon fully prepaid.

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Fresno, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one-day after date of deposit for mailing in affidavit.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the

☐ (BY FAX) I caused the above-referenced document to be transmitted by fax to the addressee(s) at the fax number(s) shown.

☐ (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) courier service for delivery to the addressee(s).

Executed on May 12, 2008, at Fresno, California.

☒ (State)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal)

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.


Molly P. Friel

ADV. JOSE FELIPE RUIZ

CASE NO. 08-CV-01804-PVT